

## **IMPORTANT EXECUTIVE DIRECTOR UPDATE IMPLEMENTATION OF ACT 743 (SB165)**

Act 743 has generated a lot of interest and concern by members on what retirement decisions a member should make. Administrators and School Boards, also, have expressed concern about what is and is not appropriate action to take concerning lawful separation of service by a member after the passage of Act 743. Some may have mistakenly viewed the passage of Act 743 as a tacit indication by ATRS that ATRS encourages members and employers to set up “retire and rehire” plans. This update will address the issues that are important for members and employers to know about Act 743. In addition, this update will include a warning that members may be taking a great risk in attempting to retire earlier, than originally intended, due to the passage of ACT 743.

As a reminder, Act 743 does the following:

- Requires 180 day separation for members who retire after July 1, 2009, unless the member either 1.) has 38 or more years of credited service or 2.) is 65 years of age or older.
- Eliminates the earnings limitation, which means retirement benefits will no longer be reduced if a member legally returns to work at covered employment.
- Requires a uniform employer contribution rate for all school employees whether active, T-DROP, or retired.

### **MANDATORY CERTIFICATION**

The IRS now requires ATRS to have rules to prohibit members from retiring before the system’s normal retirement age and returning to work at an ATRS employer. ATRS must comply with the IRS mandate and will take every action necessary to do so. If a member fails to retire, according to the separation requirements of ATRS, and returns to work at an ATRS employer, then the retirement is voided and the member **must repay all retirement payments** made and **return all T-Drop distributions** made to the member **with interest**. Extreme caution should be used to avoid a financial disaster by violating the rules.

ATRS is preparing an affidavit/certification form that **members and their ATRS employer** must execute under oath that establishes ATRS is taking all necessary action to ensure the separation from employment is real and not contrived. The affidavit, **to be signed under oath**, will include the follow representation:

- The member is executing the retirement application and forms to fully retire from ATRS covered employment.
- The member and employer are completely severing the employment relationship.
- The member does not have a contract, option, understanding, representation, or other proposal between the member and an ATRS employer for re-employment after his/her separation from the current ATRS employer. (The employer will only have to certify that the employer has not made such an arrangement with the member.)
- The member is not performing usual duties for the employer as a volunteer in anticipation of completing a separation period and being rehired.
- The member has not engaged anyone to fulfill the job duties of the member until the member separation is complete with an understanding the individual would resign, allowing the member to be rehired. (The employer must also make this representation.)
- The member is not being paid as a consultant, either directly or indirectly, by the employer either through personal contract, contract with another company or entity, or through a temporary service.
- The member has not relied upon the representation of an ATRS employer that a position will become available to the member after the separation period is met.
- The member must agree that the member would have no legal claim against an ATRS employer for failure to hire or rehire the member after retirement due to any representation, agreement, or obligation of an ATRS employer after the member's voluntary retirement.
- The member must represent that, during the separation period, the employer is not paying any salary, payment, remuneration, stipend, or other fee arrangement for services rendered or commitments made by the member **after** the member's official retirement date. (The employer must also make this representation.)

ATRS may expand this certification to include other potential circumstances that would pose a loophole to "actual versus contrived" separation.

### **PERMITTED PAYMENTS**

ATRS will allow the payment of health insurance through the employer with employee/member earnings made prior to the official retirement date. ATRS has learned that certain school districts' payment schedules and insurance payments have, historically, included the payment of health insurance for members during their transition to retirement status using prior earnings. ATRS staff has obtained sufficient information to determine that such a payment is not prohibited, if the payment is made in the ordinary course of business **from the member's salary/income earned prior** to the date of official retirement, even if the payment is made after retirement. ATRS staff felt it unnecessary to require any change in this standard practice by some employers. However, this payment process must be a standard practice and it must be paid from salary/income earned by the member prior to the official retirement date.

## **OTHER CONSIDERATIONS**

ATRS recommends members take a long-range view of retirement. As I have stated in a prior update, very few members should consider retirement due to passage of Act 743. There is an old saying that is true in almost every instance that “expenses rise to meet income.” The lure of having a retirement check and a paycheck may work against many members’ long-term interests. By retiring early, the member gives up a pre-tax savings plan that guarantees a member more income from retirement plans when the member actually retires without working or becomes unable to work in the future.

Careful consideration should occur before trading a short-term boost in income with a lower standard of living when the member decides to no longer work or becomes unable to work. Consideration should also be given to the likelihood that the member’s immediate income may increase while still working, putting the member into a higher income tax bracket. Pressure to spend the extra income on children, grandchildren, and family is often hard to resist. By remaining in ATRS as an active member, the money needed in “real” retirement continues to grow. The increase in final retirement benefits helps to ensure a quality retirement when the member’s work is finally done and a high quality of life, in retirement, is the real objective.